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ABSTRACT

The study reported here examines the relationship between compulsory attendance laws and the juvenile justice system in the United States. The content is presented in five chapters. The first, an introduction, covers the purpose, limitations, and procedure of the study. Chapter 2 explores the historical development of compulsory school attendance and child labor legislation. The next chapter examines the beginnings of the juvenile court and current problems related to compulsory schooling and the juvenile justice system. Chapter 4, through discussion of court decisions, covers current movements and trends related to children's rights in relation to the school, juvenile justice system, and community. Alternatives to compulsory schooling and correctional intervention with truants are explored in the last chapter. A bibliography is attached. (EM)

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Compulsory School Attendance Laws And The Juvenile Justice System

Carole Lorraine Braden

U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
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INTRODUCTION

In 1900 a chief probation officer reported that truancy seemed to be the foundation of delinquency and crime (Anthony Platt, 1969). It was estimated that fifty per cent of all delinquency cases resulted primarily from truancy. At the present time large numbers of young people continue to be brought into the juvenile justice system for failure to attend school. Justification for legal intervention with these children has always been based upon compulsory school attendance laws.

An important rationale of state intervention is the belief that delinquency can be prevented and that the juvenile court acts in the best interests of children. Studies have shown, however, that despite the laws, police, and truant officers, the school dropout rate in the United States is between thirty and forty per cent. The implication in the literature is that the juvenile justice system is not able to prevent or control truancy (Edwin M. Lemert, 1967).

Authors of one study concluded that apprehension itself encourages rather than deters delinquency (Sol Rubin, 1972). The findings indicate that once a person is designated a delinquent or truant, the machinery of the self-fulling prophecy is put into motion and in some ways the processing helps to perpetuate delinquent conduct. It has been suggested that schools, police, and the courts contain the criminogenic forces that increase the severity of the problem. In view of this, it has been recommended that serious consideration be given to the complete elimination of juvenile court jurisdiction over non-criminal conduct such as truancy (**Task Force Report**, 1967).

Basic goals and directions of compulsory schooling and juvenile courts are being questioned. It has been suggested that compulsory schooling has reinforced the concept of the child as subject to the complete control of the state and parent. Compulsory school attendance has taken the privilege of self-determination from youth and there is now a growing assertion in the literature that this is an abrogation of their legal rights.

It has also been suggested that schools cannot provide an environment that encourages intellectual and emotional growth as long as they are organized around a compulsory format. There are growing recommendations that compulsory school attendance laws be abolished (Ivan Illich, 1971). "Where an institution—any institution, even the most 'socially valued'—is found to conflict with human needs, democratic thought holds that it ought to be changed or abolished [Jerome Skolnick & Elliott Currie, 1973, p. 15]."

Purpose of the Study

The purpose of this research was: (1) to critically examine the nature of the relationship between compulsory school attendance laws and the juvenile justice system, and (2) to explore the movements and the trends related to children's rights.

The specific questions explored were: (1) Why do we have compulsory school attendance laws in the United States? What are the advantages and disadvantages? (2) Are children's rights violated by mandatory schooling and juvenile court involvement with truancy? (3) What are some alternatives to compulsory school attendance laws and to drawing the truant into the correctional system?

Justification of the Study

The current seemingly radical call for abolishing compulsory school attendance and juvenile court jurisdiction over truancy brings to light the realization that the basic concepts of childhood and protective intervention have rarely been questioned. Despite the recognition of the destructive elements that exist within the juvenile justice system and the schools, the basic structures and goals of these institutions have generally been accepted. The justification of this study, therefore, was based upon the apparent need for critical assessment of these fundamental issues.

Definitions

The following definitions were applied: (1) Although it is recognized that the process of maturation and "childhood" begins in infancy, in this study attention was directed primarily to the age span seven to eighteen. Childhood as herein used is from seven to eighteen. (2) The juvenile justice system is defined as a large, diverse, inter-related function of police, probation, institutional placements and courts.

Limitations of the Study

This study was limited to exploration of historical data, contemporary literature and law concerning compulsory school attendance, child labor, the juvenile justice system and the legal rights of children in the United States from 1852 to the present. Due to the expansive nature of the issues, only a brief description of major areas was possible in this study.

The study excluded detailed discussion of important and problematic issues of family life, poverty and discrimination. These issues are, however, directly related to the problems of schooling and the juvenile justice system.

Excluding information obtained from case law and legislation, much of the historical data was obtained from secondary sources selected by this researcher. It was not possible to conclusively answer the descriptive questions because of the various interpretations of historical data

and the fluidity of judicial decision regarding children's rights.

Procedure and Organization of the Study

A specific goal of the study was to answer three descriptive questions concerning compulsory school attendance laws, children's rights and the juvenile justice system. The source of data explored was published literature, case law, state and national legislation.

An attempt was made in Chapter II to answer the first question by exploring the historical development of compulsory school attendance and child labor legislation. Chapter III examined the beginnings of the juvenile court and current problems related to compulsory schooling and the juvenile justice system. Historical information was used to attempt to interpret current problems and to illustrate trends regarding the status of children. Issues related to children's rights were explored in Chpater IV through discussion of court decisions and concerns which have been expressed in the literature. The goal of the chapter was to answer the second question. Alternatives to compiusory schooling and correctional intervention with truants, question number three, were explored in Chapter V.

In the following chapter the historical beginnings of compulsory school attendance laws and child labor legislation in the United States are discussed.

HISTORICAL DEVELOPMENT OF COMPULSORY SCHOOL ATTENDANCE IN THE UNITED STATES

Much of the philanthropic energy of the late Nineteenth and early Twentieth Centuries was devoted to the creation of special facilities for children who had been formerly treated in the same way as adults. Special hospitals were organized for the treatment of children, public and private institutions were developed to care for dependent children in place of the former almshouse, reform schools increased in size to receive delinquents who would have otherwise been sent to jails and prisons. The juvenile court movement instituted significant differences between the trials of children and adults. State and federal legislation sought to protect children against the abuse of labor and compelled them to spend more time in school. The creation of mother's pensions, forerunner of Aid to Families with Dependent Children, combined the concerns about schooling, labor and the home (Robert H. Bremner, 1971).

It is assumed that the current status of youth can be better understood through an examination of historical influences. The following description is, however, not comprehensive due to the expansive nature of the issues. Discussion in this chapter will be limited to an exploration of some of the major historical developments relating to compulsory school attendance laws and child labor legislation.

The purposes and goals of education in the United States have been the subject of continuing debate since colonial days when education by the family was primary, and formal schooling provided secondary and supplemental religious instruction. The change from a rural, frontier society to an urban based, industrialized country served as a catalyst for educational development. Throughout United States history the basic educational goal has been to answer the question of how it would best serve society and the development of the nation (Wilbur B. Brookover, 1974).

After the United States Constitution was ratified in 1789, Thomas Jefferson became the outstanding spokesman for "free, universal education". His belief was that education of the population would minimize the threat of political tyranny by seeking out and cultivating natural talents of children. Other supporting arguments held that education would increase the productivity of the people, increase the nation's prosperity, diminish crime and reduce poverty. Jefferson's beliefs were not immediately accepted due to opposition based on the fear that free public education would weaken religious doctrines and parental authority. The greatest opposition at that time arose over the citizen's unwillingness to pay taxes to support the schools (Abbott & Breckinridge, 1917; R. Freeman Butts and Lawrence A. Cremin, 1953).

By 1848, twenty-four of the thirty states had a state school office and school tax was widely accepted (H.G. Good, 1962). Many citizens, by this time, began to express a deep belief in the power of education to regenerate and perfect national life. Americans depended upon the school to create national unity and uniformity of behavior possibly because they lacked a state church of other national institutions that have been used to maintain unity in other parts of the world.

> The story of American education revolves around a shifting balance between the social need to maintain a common outlook and the need and hope of countless individuals to find their own forms of fulfillment [Bremner, 1971, p. 1093].

A concern of the early educators was the mass of immigrants who poured into America in the mid-nineteenth century. They worried that the new residents with their different languages, religions and cultures would change the identity of American character. Their goal was to use the free public schools to assimilate the foreigner, to impose cohesion and stability (Murray N. Rothbard, 1974).

The principle of free, state support public schools had been accepted by 1848, but as early as 1862:

> ...The evils of absenteeism and irregular attendance were among the most serious problems facing school administrators. ...It was recognized by friends of universal education that a compulsory attendance law was necessary to compel all children to attend the free schools that were provided for them by the state [Abbott & Breckinridge, 1917, pp. 39-43].

In 1870, less than five per cent of the high school age portion of the population were attending school. The majority were already out of the school system and working (Report of the Panel on Youth, 1974).

The explanation for the non-attendance was that the parents of the children were ignorant and indifferent to the benefits of the education being offered. Additionally, children were a financial asset to the family and parents depended upon their earnings. Thus, the need for the coercive device of compulsory attendance laws was recognized.

Massachusetts enacted the first compulsory school attendance law in 1852, but actual enforcement did not begin at that time. The law set the original pattern for compulsory school attendance.

> Every child between seven and fourteen shall attend some public school in the city or town in which he resides during the entire time the public day schools are in session...[Laws of Massachusetts, 1852, 240,1, 2, 4; Revised 1902, Vol. I, p. 477].

The law specified exemptions for illness, poverty, or other provisions for education outside the public school. The exemptions were so broad that the practical effect of the law was negligible. This law of 1852, and the ones that followed in other states, was the beginning of a trend to regulate and compel school attendance (Good, 1972). New York passed its first compulsory attendance law in 1874 and included provisions for the truant.

> The board of education ... authorized ... to make all needful provisions, arrangements, rules and regulations concerning habitual truants and children between said ages of eight and fourteen years of age, who may be found wandering about the streets or public places of such city or town during the school hours ... having no lawful occupation or business, and growing up in ignorance, and said ... regulations shall be ... in their judgment, be most conducive to the welfare of such children, and to the good order of such city or town; and shall provide suitable places for the discipline and instruction and confinement, when necessary, of such children, and may require the aid of the police of cities and constables of towns to enforce their said rules and regulations [Laws of the State of New York, 421, p. 534, 1974].

Thirteen states had passed compulsory school attendance laws in the 1870's, but few were effective. There was great resistance to compulsory attendance requirements. The standard arguments were based upon the belief in the unconstitutionality of the limitation of parental power (James Bryant Conant, 1959). In 1890 Oscar H. Cooper, State Superintendent of Education in Texas, stated in an address to the National Education Association:

> I hold that compulsory education is contrary to the dominant idea which has pervaded the development of American institutions. ... Education is the inherent right of the family and parent. The dangers to the welfare of society resulting from a great mass of illiteracy are appalling, but the evils of illiteracy are less perilous than those which result from the destruction of parental authority and the loosening of family ties [Grace Abbott, 1938, p. 310].

Effective attendance laws did not develop until around 1900. By 1900 compulsory attendance laws had been adopted in thirty-two states and by 1920 in all states (Good, 1972). The courts have affirmed the right of the states to pass and enforce compulsory school attendance laws. Statutes making the education of children compulsory have become very general in the United States.

> Their constitutionality is beyond dispute, for the natural rights of a parent to the custody and control of his infant child are subordinate to the power of the state and may be restricted and regulated by municiple law [Schools, 68 Am Jur 2nd, 227 p. 551].

In 1901, the Supreme Court of Indiana in **State v. Bailey** upheld the constitutionality of the state's compulsory attendance law. The father of Vory Bailey refused to send him to school because he believed compulsory attendance invaded his natural right as parent to govern and control his children. The court held that the parent is obligated to educate his child not only as a duty owed the child but as a duty to the state (157 Ind. 324, 1901). Other courts have followed this argument that the state demands compulsory schooling primarily for the welfare and safety of the state, and that schooling may be viewed as a privilege or a duty rather than a basic right (Clark Spurlock, 1955).

The right of a parent to educate children in private schools was insured by the United States Supreme Court in 1925 in **Pierce v. Society of Sisters.** In 1922 Oregon passed a compulsory school law that required attendance in public school. A Catholic parochial school challenged the constitutionality of the statute. The Court held that the law was an unconstitutional interference with the liberty of the parents to provide education for their children. The decision did not question the State's authority to regulate and compel attendance but held that private schools have the same interest in education and present no detrimental effects to the state (45 S. Ct. 571, 1925).

The statutes vary considerably as to what constitutes sufficient schooling in place of attendance at a public school. It has been held that a private school, in order to comply with compulsory attendance laws, must require regular hours, instruction in the same or similar subjects, and show proficiency comparable with the public schools (Schools, 68 Am Jur 2nd, 229). The continuing developments in public education have resulted in increasingly strict laws governing compulsory attendance, standards for teachers, and curriculum requirements. These requirements have been extended to regulate private and parochial schools (Conant, 1959).

The law's interference with the liberty of parents to direct the education of their children has been fought especially by the Amish sect. One of the most controversial Amish beliefs is that formal education of children should not extend beyond the eighth grade. They believe that separation from the worldliness of contemporary soc-

iety is basic to salvation and is at the heart of their culture. They have responded to the conflict with compulsory school attendance laws by attempting to establish their own schools but some states refused to recognize them because they did not meet the minimum educational requirements. The early Amish challenges to attendance laws failed because they did not meet the minimum educational requirements. The early Amish challenges to attendance laws failed because previous court interpretations of the free exercise clause were not broad enough to include school attendance (Donald A. Erickson, 1966; Norman R. Prance, 1971).[1]

A 1971 United States Supreme Court decision, for the first time, upheld the Amish claim for exemption to compulsory school attendance on free exercise grounds. In **Wisconsin v. Yoder,** the Court held that in order for a state to compel school attendance beyond the eighth grade, against a claim that it interferes with a religious belief, it must be shown that the state does not deny the free exercise of religion by its requirement, or that there is an overriding state interest to deny constitutional free exercise protection. The decision of the Court was that the state's interest in compulsory education is not so compelling that the established religous beliefs of the Amish must yield to compulsory school attendance laws. Thus, on the constitutionally protected right to free exercise of religion of the parent, rather than the child, the Court's decision prevents the state from compelling school attendance of the Amish beyond the eighth grade (**Wisconsin v. Yoder**, 402 U.S. 994, 1971).

Current State Laws on Compulsory School Attendance

All states, with the exception of Mississippi, have compulsory school attendance laws.[2] The standard age requirements are from age seven to sixteen, however, the standards vary. In Maine, Nevada, New Mexico, Pennsylvania, Tennessee, Texas, Virginia, and Wyoming the age at which a child may voluntarily terminate school attendance is seventeen. In Ohio, Oklahoma, Oregon, California, and Utah the age is set at eighteen. Various provisions are made in the the laws for punishment of children who violate the attendance laws. Twenty-four states have authority for commitment of truants to special institutions, often the same ones to which delinquents are committed. The authority of the juvenile court extends to the punishment of children for truancy (Richard W. Kobetz & Betty Bosarge, 1973).

In the following states, provisions were made to repeal or waive compulsory attendance laws when enforcement would compel racial integration. For example, in 1956 Mississippi repealed their attendance law "... which has never been enforced, especially with reference to Negro children. Proponents wanted to get that law off the statute books in event it becomes necessary to use a 'stand by' constitutional authority given the legislature to abolish public education [**Southern School News,** 1956, p. 6]." South Carolina enacted six measures aimed at preserving racial separation within public schools. Most of the acts were designed to strengthen the right of the local school to control attendance. Governor George Timmerman, Jr. stated the action was taken "...as a pledge of good faith to the people of South Carolina that they will not be forced to send their children to mixed schools [**Southern School News,** 1955, p. 13]."

These issues of politcal control, social stratification, and juvenile court involvement in the lives of children are points of controversy and will be explored later. The history and current status of compulsory school attendance laws are intimately related to child labor regulations. One of the early arguments against compulsory school attendance was that the family needed the help of the child for economic reasons. Child labor and the schools are closely interconnected as methods of social and economic control. The major historical developments of child labor laws are discussed.

The Development of Child Labor Legislation

Until the 1880's child labor was considered both economically and socially valuable. Most Americans believed that hard work was good for children and that it prevented crime and pauperism. Between the years 1885 and 1889, ten states had passed some laws restricting child labor. The laws were not effective and there were no generally accepted standards of protection for exploitation of child laborers.

> Ten-year-old boys were commonly found in the blinding dust of coal breakers, picking slate with torn and bleeding fingers; thousands of children sweltered all night for a pittance in the glare of the white-hot furnaces of the glasshouses. Young girls toiled in damp, dust-laden cotton mills for long hours, six days a week. Unsanitary factories and tenement sweatshops, canneries, and the street trades, including the night messenger service, all took their toil from the home, the school and the playground while most Americans looked on with approval or indifference [Walter I. Trattner, 1970, p. 11].

There was considerable expansion and mechanization of industry following the Civil War and large numbers of children were employed in factories and southern mills. In 1900, about two million children, ages ten to thirteen, were employed in wage-earning occupations. An argument often made for the curtailment of child labor was that children were competing with adults for jobs,

thereby causing unemployment. Organized labor and management began to support a movement for increased schooling and control of child labor (Markham, Lindsey & Creel, 1914).

The first and continuing argument for the restriction of child labor, according to Grace Abbott (1938), was that education was necessary in a democracy and working children could not attend school. In states which did not prohibit employment of children, school administrators found that public opinion did not support the enforcement of the compulsory attendance laws. A growing movement was undertaken to bring the child labor and compulsory school attendance laws into harmony so that each would reinforce the other. In 1904 The National Child Labor Committee was organized. The committee successfully promoted restrictive legislation to prevent child labor and made a constructive imprint on the whole field of child welfare (Abbott, 1938; Trattner, 1970).

The attack on child labor was one of the overlapping lines of reform which led to the realization that solving problems of childhood required comprehensive efforts to promote financial security for families. In 1911 the first mothers' pension provision was enacted in Illinois. "Mothers' pensions... were paltry long-term cash provisions for children without employable fathers, contingent upon their mothers' acceptance of middle-class behavioral norms [Mark H. Leff, 1973, p. 397]." Mothers' pensions complemented the drive for child labor legislation and compulsory school attendance laws. Advocates of the mothers' pensions argued that child labor would be reduced because the mother would not be dependent upon the earnings of the child. A similar argument was that with a pension, a mother would be able to quit work and remain at home to insure the child's attendance at school thereby reducing truancy and delinquency. "For all their flaws, mothers' pension programs made appreciable inroads into the poverty of a significant number of people [Leff, 1973, p. 415]."

The early attempts, before the 1930's, to control child labor by federal legislation were unsuccessful.[3] In 1916 the Keating-Owen Act was adopted by Congress. The act prevented interstate commerce in the products of children under age sixteen. The restriction applied to mines, quarries, canneries, mills, factories, workshops, and other places in which goods were produced for interstate commerce (432 U.S. Statutes at Large, XXXIX, Part I, 1916).

In 1917 the father of two boys employed in a North Carolina cotton mill applied for an injunction to restrain the enforcement of the act. The father, Dagenhart, alleged that the act was unconstitutional because it would deprive his sons of their right to pursue an occupation and would deprive him of their earnings. The United States Supreme Court did declare the act unconstitutional in **Hammer v. Dagenhart.** The Court held that the act was not a legitimate exercise of Congress' power to regulate interstate commerce matters which are constitutionally entrusted to the state (247 U.S. 251, 529, 1918).

In 1919, following the Supreme Court decision in **Hammer v. Dagenhart,** Congress enacted a taxing penalty on industries which employed children under sixteen. The act provided that the employer pay ten per cent of the net profits received (U.S. Statues at Large, XL, Part I, 1919). The child labor tax law was declared unconstitutonal by the United States Supreme Court in **Bailey v. Drexel** in 1922 (259 U.S. 20, 449, 1922). Again, the court reasoned that the tax was not a legitimate exercise of Congress' power.

These decisions brought about a general demand for an amendment to the Constitution restricting child labor. In 1924, a twentieth amendment to the Constititution was approved by Congress:

> Sec. 1. The Congress shall have power to limit, regulate and prohibit the labor of persons under eighteen years of age.
> Sec. 2. The power of the several States is unimpaired by this article except that the operation of State laws shall be suspended to the extent necessary to give effect to legislation enacted by the Congress [U.S. Statutes at Large, XLIII, Part 1, p. 670, 1924].

One of the arguments in support of the Amendment was that state regulation had been inadequate and there was a lack of uniformity and enforcement (Julia E. Johnsen, 1926). The opposition voiced concern that federal regulation of child labor would be an encroachment on the rights of the states and the home. This opinion was expressed in Congressional Record by W.J. Fields, Governor of Kentucky:

> ... There can be no real liberty where such important personal right may be limited, regulated, and prohibited to the extent proposed in the twentieth Amendment to the Constitution of the United States, in which it is sought to give Congress the power to enter the homes for the purpose of regulating the child life, even to the extent of actually prohibiting all labor of persons under eighteeen years of age... [Congressional Record, 1926-1927, pp. 102-103].

By 1933, only six states had ratified the Amendment. It was therefore defeated for lack of ratification by three-fourths of the states (Bremner, 1971).

During the days of the depression in the United States and the New Deal programs of the Roosevelt administration, child labor legislation was passed that was not subsequently declared unconstitutional. As the depression deepened, regulation of child labor was viewed as a possible way of opening up jobs for unemployed adults. The

New Deal achievement in child labor restrictions came with the enactment of the Walsh-Healey Public Contracts Act of 1936 and the Fair Labor Standards Act of 1938. Both acts are in effect at this time and provide the federal standards for regulation and control of child labor.

The Fair Labor Standards Act prohibits employment of children under sixteen during school hours. The minimum age for employment in nonagriculture occupations declared hazardous by the Secretary of Labor is eighteen. Employment at age fourteen is limited to certain occupations outside school hours which do not interfere with schooling. In 1949, the provisions were broadened to include the employment of children under sixteen in commercial agriculture during school hours. The Act does not prohibit employment of children by their parents in agriculture or nonagriculture occupations (U.S. Code, Title 29, C.676, 52 Stat 1060, 1938). The Walsh-Healey Public Contracts Act set labor standards regarding child labor in the performance of government contracts in excess of $10,000. The Act prohibits the employment of boys under the age of sixteen and girls under the age of eighteen (U.S. Code, 1964, Title 41, C.881, 49 Stat 2036, 1936).

In addition to the federal regulation, all fifty states have child labor laws and an employer must obey both. If there are variations between the child labor standards of the state and federal government, the employer must follow the higher standard. There has been a voluntary establishment by many employers of an eighteen year minimum age for employment which has limited the employment of young people even more than the actual legislation (Nelda Umbeck, 1960).

In summary, compulsory school attendance laws and child labor restriction grew slowly from around 1852 to the 1930's. There was strong opposition to both based upon the belief in the rights of parents to control the lives of their children. The labor of children was economically profitable to parents and society until the days of the depression. A widespread movement to enforce compulsory school attendance laws and restrict child labor gained support during the depression as a means of opening up jobs for unemployed adults. It appears that compulsory school attendance laws and child labor legislation developed as a means of social control based upon the belief that they serve the best interests of the individual as well as society.

Both during and since the 1930's the problem of idle, unemployed youth has seemed more difficult and challenging than the protection of children against premature work. Recent concern has been expressed regarding children who remain in school more or less against their will because there are no jobs available. James Coleman (1973) commented: "With every decade, the length of schooling has increased until a thoughful person must ask whether society can conceive of no other way for youth to come into adulthood." The effect has been to create severe stresses by prolonging adolescence and dependence through increased schooling and lack of opportunity in the labor market (Report of the Panel on Youth, 1974).

The juvenile court, another significant institution in the lives of children, developed within the same time period as compulsory school attendance and child labor laws. In the following chapter the development of the juvenile court and the impact of compulsory school attendance is explored.

THE JUVENILE JUSTICE SYSTEM AND COMPULSORY SCHOOL ATTENDANCE LAWS

> Institutions that claim they can do almost everything should not be surprised if they are accused of "failing" to do anything [William Goetz, p. 270, 1974].

The juvenile court has been proclaimed the most significant institution to develop during the nineteenth century child welfare reform movements. As quoted in every issue of the **Juvenile Court Judges Journal:** "The Juvenile Court is the most significant advance in Anglo-Saxon administration of justice since the Magna Charta in 1215 (Roscoe Pound)." There is now considerable question in the literature that the juvenile court has failed to meet the goals set by the founders and that the goals themselves may be the cause of the failure.

A brief discussion of the development of the juvenile court follows. The purpose of this chapter is to examine the impact of compulsory school attendance laws on the development of the juvenile court and to define some of the problem areas related to the two institutions. The discussion is organized into two broad areas. First, the history of the juvenile court and problem areas. The second section of the chapter will be an examination of problems related to compulsory attendance laws.

Historical Development of The Juvenile Court

Both industrialization and immigration in the nineteenth century intensified and accelerated the movement to reform the methods of treating children. As indicated previously, truancy rose rapidly and there was growing concern over environmental influences on the lives of children. The juvenile court was created in an aura of reforms that preceded it.

The first legislation defining a "delinquent child" and creating a separate juvenile court was enacted in Illinois in 1899. The act provided that: "The words delinquent child shall include any child under the age of 16 years who violates any law of this State of any City or Village ordinance." The act also included provisions for dependent, neglected children:

> ... Any child who for any reason is destitute or homeless or abandoned; or dependent upon the public for support; or who habitually begs or receives alms; or who is found living in any house of ill fame or with any vicious or disreputable person; or whose home, by reason of his neglect, cruelty or depravity on the part of its parents, ... is an unfit place for such a child; and any child under the age of 8 years who is found peddling or selling any article or singing or playing any musical instrument upon the street or giving any public entertainment [Illinois Laws, Sec. 1, p. 131, 1899].

Perhaps the most significant part of the act was the concluding section:

> This act shall be liberally construed, to the end that its purpose may be carried out, to wit: That the care, custody and discipline of a child shall approximate as nearly as may be that which should be given by its parents, and in all cases where it can properly be done the child be placed in an improved family home... [Illinois Laws, Sec. 21, p. 137, 1899].

Later amendments to the act expanded the definition of delinquency to include behavior such as "growing up in idleness and crime", and incorrigibility (Illinois Laws, Sec. 2, p. 142, 1901).

The earlier procedures for handling children in trouble were identical in form and application to those of dealing with adults. Children were tried for their crimes in criminal courts and were imprisoned often in the same jails and prisons with adults. The common law did not differentiate between an adult and child who had reached the age of criminal responsibility, age seven to twelve. The juvenile court was designed to modify harsh treatment of juveniles in the existing system (Julian W. Mack, 1910).

The Illinois Juvenile Court Act was not, however, a radically new or innovative concept. As early as 1825, New York established the House of Refuge in which children were separated from adult offenders. The development of probation as a substitute of institutionalization began in Massachusetts in 1869 (Bremner, 1971). In Illinois, in 1893, the Chicago Board of Education began to assume responsibility for the supervision of boys under age seventeen who were incarcerated in the city prison. The interest of the educational authorities in the prison was prompted by the fact that a high percentage of the inmates had been committed there for truancy (Anthony M. Platt, 1969).

The foundation for the new juvenile court was based on the English concept of **parens patriae.** From feudal days the English chancery court had experienced parental, protective jurisdiction over children on behalf of the King. The **parens patriae** principle was central to the new juvenile court and it marked a conceptual change in the nature of the child's conduct, the child's responsibility, and the state's role in dealing with the child (Samuel M Davis, 1974).

Under the new juvenile court act, children were no longer to be tried as criminals but were to be treatd as

wards of the state, not completely responsible for their conduct, and capable of being reformed. The juvenile court proceeding was intended to be a non-adversary, civil, rather than criminal process. The question of the court was not whether the child had committed a specific offense but rather what the court could do to protect and reform him (Mack, 1910).

The nation's appellate courts accepted this logic and ruled that children were not entitled to constitutional protections. In **Commonwealth v. Fisher,** the Pennsylvania Supreme Court held that the juvenile court act:

> ... Is not for the punishment of offenders, but for the salvation of children. ... To save a child from becoming a criminal, or from continuing in a career of crime ... the Legislature surely may provide for the salvation of such a child ... by bringing it into one of the courts of the state without any process at all, for the purpose of subjecting it to the state's guardianship and protection... The act simply provides how children who ought to be saved may reach the court to be saved. ... None of the objections urged against the constitutionality of the act can prevail [213 Pa. St. 48, 53, 62 Atl. 198, 200, 1905].

The Illinois statute became a model for juvenile court legislation throughout the nation. By 1912, twenty-two states had passed juvenile court acts and in 1932 every state except Maine and Wyoming had juvenile courts. Today every state has a juvenile court act (**Task Force Report,** 1967).

A hallmark of the juvenile court has been the jurisdiction over a large, very diverse, group of offenses only applicable to children. Besides enforcing the penal law the juvenile court has attempted to reinforce the duties owed schools and parents by children. The beginning staff of the Illinois juvenile court was composed primarily of police and truant officers. According to early reports by Timothy Hurley, Chief Probation Officer in Cook County, Illinois, truancy seemed to be at the foundation of delinquency. Over fifty per cent of the delinquency cases involved disorderly behavior, truancy, vagrancy, immorality, and incorrigibility (Platt, 1969).

The implication is that juvenile courts were created with a primary goal of enforcement of compulsory school attendance laws. The following observation by Edith Abbott and Sophonisba Breckinridge seems to support this implication:

> In 1899, the legislature ... passed the parental or truant school law ... In accordance with the provisions of this law truants or children who went to school but behaved so as to render themselves a nuisance and make their attendance worse than useless, could be committed to the parental school for custody, discipline, and training. At the same session of the legislature the juvenile court law was passed ... It was thus provided that truant or unruly school children were to be committed to the newly established parental school through the agency of the juvenile court [Abbott & Breckinridge, 1917, p. 86].

The theory of the law was that if a child refused to attend school or had behavior problems he could be institutionalized where he could not escape.

It is interesting to note that in Colorado, the compulsory school attendance law of 1899 was the foundation for a juvenile court until 1903 when juvenile court legislation was enacted. The school law provided that the county court had jurisdiction over "juvenile disorderly persons" and could commit them to reformatories. Judge Ben Lindsey viewed the Colorado school laws as justification for intervention in all juvenile cases. He recruited a probation staff from the school truant officers and began conducting juvenile court hearings separately from the rest of the county court business (Joseph M. Hawes, 1971).

There are indications that the states have never fully accepted the idea of specialized treatment for children who have violated the criminal law. From the inception of the juvenile court until the present time, most states have been reluctant to include the more serious offenses within the juvenile system. The juvenile court has been viewed as a social agency whose function is to deal with truants, runaways, and minor law violations. Some states exclude certain offenses from the jurisdiction of the juvenile court and many states have concurrent jurisdiction or waiver provisions to provide for the child to be tried as an adult (Samuel M. Davis, 1974).

The faith in the power of education has been the basis for compulsory attendance and social welfare reforms. Florence Kelly, Illinois Factory Inspector, reported in 1894 that the school attendance law was almost useless because large numbers of children were working and the board of education attendance agents did not enforce attendance. In addition, she stated the schools expelled unruly students to suit their own convenience. The child labor reformers and The Chicago Woman's Club were in large part responsible for the revised compulsory attendance laws and the juvenile court act of 1899. They were concerned with enforcing school attendance as a method of reducing delinquency, poverty, and social injustice. It has been suggested that their efforts succeeded only in strengthening the existing situation. Instead of tolerating the incorrigible truant, the schools continued to expel them and the juvenile court became a dumping ground (Bremner, 1971; J. Lawrence Schultz, 1973).

Thomas D. Eliot (1914), suggested that probation is a type of special education applied to behavior problems. Probation was attached to the function of the courts as an

alternative to institutionalization and with the goal of re-education or rehabilitation. It was suggested that not only serious delinquents, but all children's cases be under the jurisdiction of the court. The education authorities could then turn to the court for "...backing against recalcitrant parents in securing remedial measures early in the process of aberration. ... The presence of a court with ample jurisdiction and a tradition of wise precedents would ... greatly strengthen the hands of competent educational authorities [Eliot, 1923, pp. 26-27]." He proposed that probation staffs be organized under educational administration so that behavior problems could be treated as educational rather than penal problems. In response to a questionnaire, Eliot found that the majority of replies from probation officers indicated their approval of including behavior problem children within the educational system but they did not "... seem to indicate any realization that such work would or should relieve them of most of their own (unofficial) work with quasi-delinquents [Eliot, 1923, p. 31]."

Eliot's proposal obviously was not adopted and today the literature reflects the same recommendation that the schools handle truancy problems rather than shunting them off to the court. For a variety of reasons such as vested interest, public pressure, belief in the power to rehabilitate and change behavior, and the legal mandate of compulsory school attendance laws, the courts have traditionally continued jurisdiction.

> "... [In] the insensitive perceptions of an adult world, what appears to be a self-deception induced by benign but misdirected motives, persists in viewing the court handling of the child as an innocuous or even a generally constructive experience. ... The result for the child is at best inefficient and at worst disastrous [Paul W. Tappan, 1950, pp. 548-558]."

The juvenile court deals with both criminal and non-criminal problems by imposing conditions of probation, removing children from their homes and confining them in institutions. The coercive power of the court has strengthened the position of the school, police, welfare agencies, and the parents. The juvenile court reformers created a system to compel children to accept help against their wills and sometimes against the will of the parents (Schultz, 1973).

The juvenile court has not had the reclaiming and preventing effects its founders anticipated. In discussing the need for juvenile code revision. Mortimer J. Stamm (1974) called attention to the hundreds of thousands of children who are institutionalized each year; to the children who commit suicide while confined; to the brutality which pervades many institutions; to children who have become a statistic for officials seeking federal monies; to thousands of children who are prosecuted as adults when they might have been helped by the juvenile system; to the mixing of status offenders with serious delinquents, and to widespread apathy that continues to threaten the vitality and integrity of the juvenile court.

Studies suggest that children who receive probation do not fare much better than those who receive none. Henry D. McKay (1967), in a study of male delinquents in Chicago, found that delinquents who appeared before the court once and had the charges dismissed had an adult arrest rate of 36.5 per cent. Those delinquents placed on probation or committed to institutions had an adult arrest rate of 55.8 per cent.

In addition to the apparent ineffectiveness of court order action, it has been suggested that there are serious negative implications attached to a delinquency label.[4] According to many sociologists and penologists, the child's tendency toward objectionable conduct has been strengthened by the treatment of the juvenile justice system. Recognition of this problem has led many states to develop separate categories for the child not involved in a criminal law violation.

In the 1960's, California and New York created special labels for the truant, runaway, and incorrigible child. The classification in New York is Person In Need Of Supervision, or PINS. Under California law, in addition to the usual misconduct, they include a provision that a child may be made a ward of the court for being in danger of "...leading an idle, dissolute, lewd, or immoral life..." In 1973, Texas revised the Family Code to restrict the court's jurisdiction over juvenile misconduct and created a new cateogry entitled Children In Need Of Supervision, or CINS (Cal. Welf. & Inst'ns Code, Sec. 601, 1972; N.Y. Fam. Ct. Act, Sec. 712 (b) (McKinney Supp. 1973); Tex. Fam. Code, Title 3, Sec. 51.03, 1973). Children who appear in juvenile court in these states are not declared delinquent for their status offenses but are rather labeled a CINS, PINS, or a 601 of the Welfare and Institutions Code.

There is no uniform system of reporting of delinquency arrests or dispositions through the nation. It has been estimated that approximately forty per cent of juvenile arrests are for non-criminal conduct. Sixty per cent of these cases are handled without a court petition or in other words, unofficially. Depending upon the particular area and court, the arrests for truancy can range as high as fifty per cent of the total non-criminal offenses. Compulsory school attendance laws are selectively enforced depending upon the programs of a particular community. It is possible that in one county visiting teachers, attendance officers and school courts handle almost all truancy cases, while in another county the tendency is to bring all truancy cases to the juvenile court without attempting to handle them in the school (Hunter Hurst, 1973). In a study conducted in the District of Columbia to determine the total volume of delinquency, it was found that a large proportion of delinquency cases were handled by non-court agencies. Specifically, truancy was the largest category with 3,488 children registered by all agencies

(Paul W. Tappan, 1950). The question then is much broader than only juvenile court handling of truancy.

In Dallas, Texas, School-Community Guidance Centers exist as a joint function of the school district, police department, and probation department. Each guidance center is staffed by a visiting teacher, policeman, and a probation officer. The purpose of the centers is to assist with children who have dropped out of school, failed to enroll, or are truant. "The philosophy is that the conditions which created these problems must be attacked, and these children who are being deprived of an opportunity for an education must be taught [**Annual Report,** 1973, p. 12]." The centers seek to identify and locate truants, diagnose and remedy why they have failed to attend school, place them in accordance with the nature of the cause and follow up to observe their attendance. In 1973, the centers handled 22,666 cases.

Although other agencies are involved to some extent, juvenile courts still continue to exercise control in much the same way as the early courts over children truant from school. The labels have been changed, new "diversion" programs have been created, but the threat of serious stigma and uncertain gain of the treatment of truancy problems remains. It has been recommended that the juvenile court completely eliminate jurisdiction of conduct illegal only for a child (**Task Force Report,** 1967).

There is growing question that the existence of compulsory school attendance laws is in itself a cause of many of the problems. It has been suggested that unless the underlying educational conditions that contribute to delinquency are altered, any efforts to deal with the delinquent will have little effect in the long run (Kenneth Polk & Walter E. Schafer, 1972). Some of these problems and trends in thinking are explored in subsequent sections.

Issues Related to Compulsory School Attendance Laws

For large numbers of children who are discontent with the current school practices, the demand for more truant officers, most counselors, and stricter enforcement of attendance laws is a failure to recognize the broader dimensions of the problem. If there are problems in the way that institutions relate to children, then it is the institution that must be corrected (Polk & Schafer, 1972).

It has been observed that schools have other functions besides the humane mission to promote the growth and education of children. One of these functions is a custodial one. Society, by way of compulsory attendance laws and child labor laws, demands that schools be a place where children can be kept out of everyone else's way. The coercion of the juvenile court has served to say to children that if they do not attend school they will be institutionalized where they will be forced to go. For most children, school is the better choice (John Holt, 1972).

For the child in conflict with adults, there is a flaunting of independence from control which is reflected in truancy, vandalism and delinquency. "It is when social rewards for being a conforming person cannot compete successfully with the gratifications of crime that the latter are avidly pursued [Daniel Glaser, 1972, p. 10]."

In a study of runaways it was found that school is a problem for a major part of the general youth population. School problems appeared more marked among runaways, but contacts with non-runaways suggested a widespread dissatisfaction with school. School records show that runaways were absent more often, had lower grades, and were more likely to have been retained in a grade. It was suggested that the diminishing holding power of the school throughout the country may be better viewed as the school's rejection of the child (Robert Shellow, Juliana R. Schamp, Elliott Liebow & Elizabeth Unger, 1972).

The position of some critics of current school problems is that the schools have traditionally responded to behavior problems by degrading, excluding, and locking the individual out of the legitimate system. For many youth who fall behind, truant, and drop out, the response may be considered positive and life-preservative (Polk & Schafer, 1972; Paul Goodman, 1962). A study by Delbert Elliott of 743 tenth-grade boys revealed that the stress of compulsory school was relieved by dropping out and that there was less delinquency after leaving school (Gene Kassebaum, 1974).

Herbert Berger (1969), found in a study of drug addiction that there is no simple answer to the cause of drug abuse but one factor stood out in almost all the interviews. There is "...an absolute hatred of **'Compulsory Education'**! This symptom was noted by the patients early in primary school and became full blown by the age of twelve [Berger, 1969, p. 181]." These individuals believe that they are denied their freedom and are incarcerated in school against their will. They retaliate by engaging in disruptive behavior, truancy, criminal activity and vandalism.

Property damage to the Dallas Independent School District in one semester was estimated at $12,000. Thefts of school property in one semester totaled more than $33,000. The school district spends $120,000 per year on its own security for buildings and patrol cars (**Dallas Morning News,** Feb. 6, 1974). A nationwide study estimated the cost of school vandalism and theft to be at least a half a billion dollars. According to the study, the problem was not confined to low-income areas (**U.S. News & World Report,** Sept. 3, 1973).

That the school system contributes to crime and delinquency is certainly not a new realization. In 1942, Arthur C. Johnson, Jr., Educational Supervisor at Attica Prison, stated that in a group of 634 prison commitments, 258 were recidivists. Out of this group, seventy-eight per cent had truancy as the first entry on their criminal record. Of the 376 first offenders, sixty-one per cent had the same start. Sixty-seven per cent of the remainder had been, by their own admission, school truants.

It has been suggested that responses invoked by teachers and others to truancy and misbehavior are for the

most part based upon the assumption that the problem results almost totally from the motivation or personality system of the child, or from a defective home environment. As a result it is assumed that the way to correct the behavior is to direct counseling toward the individual. Acceptance of this belief accounts for the persistent call for more counselors and special programs while the basic, underlying issues are almost entirely ignored. The great appeal of social reform through education has been "...that all issues of distributive social justice were translated into matters of individual ability and effort in school and market place [David K. Cohen & Marvin Lazerson, 1973, p. 324.]."

One of the most serious problems facing our culture is the lingering presence of outmoded myths regarding the nature of education. "In a sense we are all unwilling captives—we shape our institutions and then our institutions shape us [Dwight W. Allen, 1971, p. 71]." There are those who believe that compulsory schooling has become a trap and that many children would be better off if the system did not exist at all. Equal educational opportunity is both desirable and a feasible goal but should not be equated with compulsory school laws (Ivan Illich, 1971). The concept of compulsory schooling as an instrument of social control is harmful to the democratic process. The need is for an educational system that will assure that schools cannot serve to reinforce the status quo and social and economic inequalities. The need is for "... a system men can use, not a system that uses men; a system that does not have the purpose of producing citizens who exist for the maintenance of the state [Joel H. Spring, 1974, p. 151]."

To summarize, it appears the juvenile court and school system have mutual goals of reinforcing conformity and dependency of children through coercion. There is an increasing awareness that it is more effective to modify the social structure than to attempt to conform the growing numbers of children to the old standards. There seems to be more realization of the child as a thinking, feeling human being rather than parental chattel. There is less belief in treatment and empirical evidence to support the position that many treatment programs fail, and that we do not know much about behavioral change. There is less belief in the promises of the juvenile court and substantial evidence that court involvement does create a detrimental record (Orman W. Ketcham, 1969; William G. Spady & Chaim Adler, 1974).

Based upon these realizations there has been growing concern and judicial action regarding the status of children. The folowing chapter is a discussion of the trends and movements toward change in society's treatment of children.

CURRENT MOVEMENTS AND TRENDS RELATED TO CHILDREN'S RIGHTS

> Exploitation exists where a divided function is misused by one of the partners involved in such a way that for the sake of his pseudo aggrandizement he deprives the other partner of whatever sense of identity he had achieved, of whatever integrity he had approached. The loss of mutuality which characterizes such exploitation eventually destroys the common function and the exploiter himself [Erik H. Erickson, 1950, p. 419].

The human rights movements of groups such as ethnic minorities and women have made us more aware of the many forms oppression takes in our society. The beginnings of a serious re-evaluation of the status of children has been increasingly reflected in the literature, legislative change, and judicial decision (Farson, 1974; Klapmuts, 1972).

Rights for children have been claimed in two basic categories: the rights enjoyed by adults but prohibited for children, and the special needs and interests of children which are recognized as rights. The rights of children is an extremely broad subject which encompasses issues of economic, political, and social status of youth in our society. Variables such as family autonomy, state responsibility and concepts regarding childhood influence how children are treated (Hillary Rodham, 1973).

It is not within the scope of this thesis to explore all of the proposed rights and related issues. Explication in this chapter will be limited to three areas: the rights of the child in relation to the school, to the juvenile justice system, and to the community. Some of the legal developments and trends in thinking related to these areas are explored. The following questions are considered: Are the rights of the child violated by compulsory school attendance laws? Are they violated by juvenile justice system involvement with truancy?

Children's Rights In Relation To The School

Student unrest began in the universities in the 1960's over issues of student treatment, and larger social issues, especially the Vietnam War. The unrest spread to the public schools and the source of the conflict appears to be in three overlapping areas: the goals and functions of the schools, the nature of the roles, and the way in which they are carried out (Ralph W. Larkin, 1974). Beyond the general functions of education and socializaton, the schools have historically performed functions of: "custody-control, certification, and selection [Spady and Adler, 1974, p. 38]." To a large extent student conflict can be viewed as a consequence of these functions. The custody-control function is a product of compulsory school attendance laws. These laws make school systems legally responsible for the welfare of students. As a result they restrict the options of both students and administrators (Thomas J. LaBelle, 1974).

From 1850 until about 1950, the courts viewed schools as a state and local matter and when cases were heard, the courts sanctioned educational policies.[5] Since the 1950's, the United States Supreme Court in particular, began questioning school practices that were not in compliance with constitutional requirements (John C. Hogan, 1974). A study was conducted to identify and analyze federal and state court cases relating to the rights of students during the period 1960 to 1971. One hundred fifty-eight cases regarding student rights were found. The courts ruled in favor of students in sixty-five of the cases and ninety-three were against. Three-fourths of the cases were heard during 1969 to 1971 (Elwood M. Clayton & Gene S. Jacobsen, 1974).

Throughout the past ten years, the body of school law has significantly changed. New precedents have been made by the courts and it has been suggested that litigation has become the acceptable way of resolving school disputes regarding the rights of students (Donald E. Sater, 1974; Mark G. Yudof, 1974).

Perhaps the most familiar Supreme Court decision regarding schools is **Brown v. Board of Education of Topeka, Kansas** in 1954. The decision held that racially separate schools are inherently unequal and amount to deprivation of equal protection of the law guaranteed by the Fourteenth Amendment (74 S. Ct. 686, 1974). Increasingly since 1954, school children have sought constitutional protection primarily under the First and Fourteenth Amendments (McClung, 1974).

Tinker v. Des Moines Independent School District is considered a judicial landmark which established the basic framework for the exercise of First Amendment rights in the public schools. In that case three students wore black armbands to school as a protest of the Vietnam War. They were suspended because they refused to remove the armbands at the request of school authorities. The Court ruled favorably for the students and reasoned that:

> In order for the State in the person of school officials to justify prohibition of a particular expression of opinion, it must be able to show that its action was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint. Certainly where there is no finding and no showing that engaging in the forbidden conduct would "materially and substantially interfere with the requirements

> of appropriate discipline in the operation of the school," the prohibition cannot be sustained [89 S. Ct. 733, 738, 1969].

The Court held that the wearing of armbands is a symbolic gesture closely related to "pure speech", which is protected by the First Amendment, Free Speech Clause. The Court further stated that students as "citizens" and "persons", were entitled to the same constitutional rights as adults. The Court rejected the rationale which had provided legal sanctions for school officials to regard the goals of discipline and respect for authority as justification for control, punishment, and suppression of anti-authority opinions. The rationale which had previously been considered to uphold school officials was the **in loco parentis** doctrine (Richard L. Mandel, 1975). The Court held that "... schools may not be enclaves of totalitarianism. School officials do not possess absolute authority over their students [89 S. Ct. 733, 739, 1969]."

Constitutional Due Process requirements were extended to the school in a judicial decision regarding **Dixon v. Alabama State Board of Education.** The Court held that expulsion or suspension for long periods of time must be preceded by a due process hearing. The Court reasoned that when a governmental institution acts so as to cause injury to an individual, the Constitution requires that the act be in compliance with due process of law (368 U.S. 390, 1961).

A recent case involving due process in the school is **Goss v. Lopez.** A class action suit was brought by a number of Columbus, Ohio public school students to review their suspensions which had been ordered without a hearing. A three judge District Court declared that the students were denied due process. The United States Supreme Court upheld the lower Court's decision and reasoned:

> ... the State is constrained to recognize a student's legitimate entitlement to a public education as a property interest which is protected by the Due Process Clause and which may not be taken away for misconduct without adherence to the minimum procedures required by that clause [98 S. Ct. 729, 736, 1975].[6]

The Court did not condemn suspension entirely but rather stated that it is a "necessary tool" to keep order and is a "valuable educational device." The Court recognized the administrative problems of requiring full due process hearings for every student suspension matter. They suggested that after effective notice and informal hearing had been conducted, the school official may, at his own discretion, want to permit counsel and cross-examination of witnesses.

The dissenting option of the Court was based on the belief that:

> ... There are differences which must be accommodated in determining the rights and duties of children as compared with those of adults. Examples of this distinction abound in our law: in contracts, in torts, in criminal law and procedure, in criminal sanctions and rehabilitation, and in the right to vote and to hold office ... It is difficult to think of a junior high school student for a single day, it is equally difficult to perceive any principled limit to the new reach of procedural due process [98 S. Ct. 729, pp. 744-749, 1975].

The provisions of the Fourth Amendment relating to illegal search and seizure have also been applied to students in their relationship with the schools. None of the cases heard suggested that indiscriminate search is permissible but the school's authority to do so under reasonable circumstances has been upheld (Sater, 1974). In hearing **People v. Jackson** the New York state appeals court ruled that a high school authority was acting properly when he searched a student off school premises and found narcotic paraphernalia. The Court held that the school official was standing **in loco parentis** and had obligation to protect the child from harmful and dangerous influence (319 N.Y.S. 2nd, 731, 1971). Texas courts have continued reference to search and seizures (Yudof, 1974). These opinions are expressed in **Mercer v. State** (Civ App, 1970, and **Ranniger v. State** (Civ App, 1970, 460 SW 2nd 181).

The White House Conference on Children (1970) recommended that in addition to freedom of expression and due process protection, the list of children's rights should also include the freedom from corporal punishment. Richard Farson expressed the opinion that: "If teachers did not have to act like jailers, if students were free to commit themselves to the learning experience or to leave, then the need to control behavior...would be greatly reduced [Farson, 1974, p. 127]." He suggests corporal punishment in the schools will end if we begin to recognize that bodily violence is a violation of children's rights and that it breeds violence. In discussing the extreme problems of violence in the inner-city schools, Hebert L. Foster (1974) suggests that educators must realize that when they practice corporal punishment, a value is attached to the use of physical force to achieve goals. This action becomes a model of negative aggression and violent behavior, which could and often does led to imitation by school children. The use of physical force against children is a widespread, culturally approved practice (David G. Gil, 1970).

The position of the court in reference to corporal punishment in Texas is to support the school administration. A class action suit **Ware v. Estes** to restrain corporal

punishment in the Dallas, Texas school district was dismissed by the United States District Court. The Court respected the broad and discretionary power given local boards of education by finding:

> The state cannot unreasonably interfere with liberty of parents and guardians to direct upbringing and education of children under their control; ... Corporal punishment as authorized by Texas law ... does not amount to cruel and unusual punishment [328 F. Supp. 657, 1971].

Federal and state courts are widening the scope of their review of school matters. It has been suggested that public education is undergoing a change which is intended to make it conform eventually to all aspects of the basic requirements of the Constitution (John C. Hogan, 1974). However, the question of the constitutionality of compulsory school attendance laws from the child's point of view has not been answered by the courts. The litigation concerning the Amish and compulsory school attendance laws has been based exclusively on the rights of the parents to First Amendment freedom of religion, rather than the child's free exercise claim (Prance, 1971).

According to John Shullenberger, attorney, Legal Aid Society of Chicago, a particular pleading (see the next paragraph) has been used in a number of truancy cases, with the result that the children have been released and either given another hearing or have returned home without further problem. There has not been a record that merited an appeal, therefore, the major issues presented in the pleading have not been judicially determined (Shullenberger, 1973).

In pleading to dismiss a truancy petition for commitment of a twelve-year-old boy in Chicago, the attorneys for the boy utilized an argument that the compulsory school attendance laws were unconstitutional. The pleading was made on the following basis: Compulsory attendance, although intended to serve a legitimate interest in the education of children, unreasonably interferes with fundamental liberty of the individual protected by the Constitution. The State education article in Illinois presumably creates a right for every child to seek an education. The idea that the State may force a person to exercise a right or freedom is at odds with the basic tenets of our democracy. Compulsory attendance laws and the provisions for juvenile court "punishment" of habitual truancy are repugnant to the United States Constitution. The attorneys reasoned that compulsory attendance and incarceration for habitual truancy are repugnant to the Thirteenth Amendment to the Constitution as they subject minors who have not committed crimes to slavery and involuntary servitude.

In reference to the Illinois Parental School Act under which children may be institutionalized for up to nine years for failing to attend school, they plead that this punitive conception and application is a violation of the Equal Protection and Due Process Clauses of the Constitution. Their conclusion was further substantiated by the high incidence of application of punitive measures to minors under the Act, but with negligible application of provisions to apply punitive measures to adults who induce, encourage, or condone truancy. They concluded that the interest in education which is used as justification for compelling attendance must be closely examined with a view to determining less drastic means for obtaining the same basic purpose (In The Interest Of, Littlejohn Phillips, a minor, No. 71J019164).

The significance of early judicial decisions of education cases rests more on what they did not consider, i.e., the rights or interests of the children involved (Rodham, 1973). The concept that educating children to assume responsibilities of citizenship is valid, but the results of compulsory attendance laws are failing that purpose (Lois G. Forer, 1973). Many elements in the schools have a compulsory aura about them, but they need not be worshipped or revered simply because they have endured. They serve as reminders that the schools have been coercive and compelling. The notion that compulsory attendance is innately good has directed attention away from an examination of the necessity, legitimacy and constitutionality of the laws (J. Merrell Hansen, 1974).

The increase of judicial support for student rights may be a reflection of societal concern with the dangers of increased conformity, uniformity, and authoritarianism. On the other hand, it may be an indication of societal interest in the protection and nurturing of nonconformity, dissent, and the values of pluralism (Richard L. Mandel, 1975). Recent changes in the cultural expectations and legal roles of children make it necessary for school personnel and the community to rethink the issue of compulsory attendance and enforcement (Howard M. Johnson, 1973).

Children's Rights in Relation To The Juvenile Justice System

Since the enactment of the first Juvenile Court Act, juvenile courts have relied increasingly on the values basic to pyschology, sociology, and psychiatry, rather than the law.

> This fact, combined with a natural paternalism towards juveniles, has caused an almost complete disregard by the juvenile courts of the constitutional rights and legal safeguards to which, as American citizens, children ought to be entitled [Forer, 1971, p. 49].

The **parens patriae** and **in locco parentis** doctrines have

become the philosophy of the juvenile court, compulsory school attendance laws, and child labor laws. Supporting the status of the legal irresponsibility of children is based on the belief "deeply entrenched in our socio-legal tradition," that children have "needs to be met, not rights to be respected; that their only right is to custody and protective care—to life, but not to liberty [Klapmuts, 1972, p. 452].

The procedural rights of children are expanding and are receiving growing attention. There is still a great deal of confusion in the entire area of children's rights and particularly in the area of juvenile court. The principal legislation governing children is the juvenile court act of each state. There is no single uniform justice system for juveniles, on the contrary, the legislation and policies vary widely across the nation and vary with the judges, jurisdictions and types of offenses (Gene Kassebaum, 1974).

Three landmark Supreme Court decisions have enunciated the barest faundamentals of procedural rights of children. These are: **Kent v. United States**, 1966; **In re Gault**, 1967; and **In the Matter of Samuel Winship**, 1970.

In **Kent**, the United States Supreme Court made its first decision regarding juvenile courts sixty-seven years after the first court had been established (William O. Flannery, 1973). Morris Kent, Jr., at age sixteen, was taken into custody by the Washington, D.C. police on suspicion of burglary, rape, and robbery. Following two days of questioning, he admitted the crimes as charged. On the second day his mother obtained an attorney and they were informed by the authorities that juvenile jurisdiction over Kent would be waived and he would be tried as an adult. The attorney opposed the waiver and motioned for a hearing to produce testimony that Kent was suffering from a mental disorder and the waiver should not be ordered because he was in need of hospitial treatment.

The motion for a hearing was denied, juvenile jurisdiction was waived and Kent was subsequently tried, convicted, and sentenced to thirty to ninety years in prison. The maximum possible confinement that he would have been subject to as a juvenile was five years or until his twenty-first birthday. This descrepancy in the length of incarceration convinced the Court that a waiver was critically important.

The Court held that in juvenile cases involving a possible waiver the juvenile must be offered counsel; that the attorney must be granted access to all records and reports relating to the child; that the waiver be preceded by a hearing; and that the judge give a statement of reasons for a waiver decision. In making the decision the Court reasoned that: "The State is **parens patriae** rather than prosecuting attorney and judge. But the admonition to function in a "parental" relationship is not an invitation to procedural arbitrariness [86 S. Ct. 1045, 1054, 1966]."

On June 8, 1964 Gerald Francis Gault, age fifteen, was taken into custody by the Sheriff of Gila County, Arizona for allegedly making a lewd and indecent telephone call to a neighbor. At the time he was arrested both parents were at work and no notice was left by the Sheriff of his whereabouts. When the mother learned he was in the Detention Home, she went there and was informed of why he was there and that there would be a hearing the next day. A petition was filed by the probation officer on June 9, 1964 but it was not served on the Gaults. The petition made no reference to the charge but stated only that Gault was a minor under the age of eighteen and in need of the protection of the Court. Gault and his mother appeared before the judge in chamber on that day. There was no transcript of the hearing, the complainant was not there, and no one was sworn in. Gault was questioned about the phone calls and was then taken back to the Detention Home. He had denied certain parts of the alleged phone call. On June 11 or 12 he was released to his own home. On the same day of his release his mother received a note informing her of a hearing on June 15, 1964. At the appointed time, they appeared before the judge. Gault again denied certain aspects of the call but again the complainant was not present to testify. At the conclusion of the hearing the judge committed Gault to the State Industrial School where he could remain until age twenty-one. For this particular offense the maximum punishment for an adult would have been a fine of $5.00 to $50.00, or confinement in jail for not more than two months.

The Supreme Court held that Gault's commitment was invalid and unconstitutional because it failed to comply with the requirements of the Due Process Clause of the Fourteenth Amendment. The Court's holding provided that a child subject to institutionalization must be given sufficient notice of the hearing, of charges against him and of his right to obtain counsel. The child must be advised that if he is unable to retain counsel one will be appointed. He must also be advised that there is the right to confront and cross-examine witnesses and the right against self-incrimination.

The Court reasoned that the juvenile system had excluded procedural rights by rationalizing on the basis of the doctrines of **parens patriae** and **in loco parentis.** In reference to the juvenile system they stated: "...The constitutional and theoretical basis for this peculiar system is—to say the least—debatable [87 S. Ct. 1428, 1438, 1967]."

Samuel Winship, a twelve-year-old child, was adjudicated delinquent by the Family Court, Bronx County, New York after being charged for an initial period of eighteen months, subject to annual extensions until his eighteenth birthday. The juvenile court judge issuing the order based his decision on a "preponderance of the evidence." The case was appealed on constitutional grounds. The Supreme Court held **In the Matter of Winship** that the reasonable-doubt standard of criminal law has constitutional stature and that juveniles, like adults, are constitutionally entitled to proof beyond a reasonable doubt when they are charged with a violation of a criminal law.

> ...The juvenile may be engaging in a general course of conduct inimical to his welfare that calls for judicial intervention. But that intervention cannot take the form of subjecting the child to the stigma of a finding that he violated a criminal law and to the possibility of institutional confinement on proof insufficient to convict him were he an adult [90 S. Ct. 1068, p. 1974, 1970].

Although the Supreme Court held that juveniles were entitled to the procedural rights listed in these three cases, and in spite of their previous ruling regarding an adult, they did not find that a juvenile is entitled to a jury trial. In **Duncan v. State of Louisiana,** the court had found that an adult's right to a jury trial in a serious criminal case is a fundamental right and the states are obligated to extend the right to all people with their jurisdiction (88 S. Ct. 1444, 1968). In **McKeiver v. State of Pennsylvania,** the Supreme Court held that a trial by jury is not constitutionally required in juvenile court delinquency proceedings. The Court reasoned that compelling a jury trial might make the proceeding fully adversary and end the idealistic prospect of "an intimate, informal, protective proceeding." The dissenting opinion held: "...that although the juvenile court was initially created as a social experiment, it has not ceased to be part of the judicial system. ...The juvenile is constitutionally entitled to a jury trial [91 S. Ct. 1976, p. 1999, 1971]." The doctrine of selective incorporation of due process which the Supreme Court has applied to juvenile cases requires an almost case by case analysis to discover which adult rights are also applicable to juveniles (Millard L. Midonick, 1972).

Since the inception of the juvenile court, jury trials have been permitted by statute in Texas (Jeffery E. Glen, 1970). The jury trial provision applies not only to adjudication of delinquency matters but also for conduct indicating a need for supervision (Tex. Fam. Code, Title Three, Sec. 54.03, 1973).

In one study to determine the compliance and responses of three urban juvenile courts with the **Gault** decision, the authors found that the privilege against self-incrimination was almost totally unrecognized. A few courts frequently appointed lawyers as a matter of practice, but when attorneys were not appointed, the securing of a legally valid waiver was almost unknown. The rights to confront and cross-examine witnesses were generally acknowledged if an attorney was involved. The one central conclusion of the study was that total compliance with the **Gault** decision will come gradually. The authors suggested the **Gault** appears to have accelerated the trends toward increased legal representation and legislative change in the juvenile codes. They attributed the overall "painfully slow" change to the deeply entrenched adherence to the **parens patriae** doctrine and suggested that the juvenile courts may need judges more disposed to a 'legalistic" approach (Norman Lefstein, Vaughn Stapleton, & Lee Teitelbaum, 1969).

Court and legislative reforms in the procedural rights of children have not yet conclusively reached the important question: should children not involved in criminal offenses come under the jurisdiction of the juvenile court? Traditionally the state has the authority to restrict the freedom of adults if they have violated the law. But, a large number of children who are brought before the court are not adjudicated on the basis of a criminal act, but rather because of their behavior. In New York State in 1967 there were 1,493 children institutionalized as "persons in need of supervision". In the same year, 1,313 children were sent to insitutions on the basis of law violations. The person in need of supervision category included truancy, running away, and uncontrollability (Glen, 1970).

In 1972, nineteen per cent of the males committed to the Texas Youth Council were committed for disobedience and immoral conduct, sixty per cent for crimes of stealing, nine per cent for violent crimes, and sixteen per cent for other reasons. Fifteen per cent of the females were committed for crimes of stealing, four per cent for violent crimes, thirteen per cent for other reasons, and sixty-eight per cent for disobedience and immoral conduct. At one of the girl's facilities, eighty per cent of the girls had been committed for runaway or truancy (**Morales V. Turman**, Memorandum Opinion and Order, No. 1948, 364 F. Supp. 166, 1974).

Since September 1, 1973, under the provisions of a new Family Code in Texas, commitment to the Texas Youth Council for non-criminal conduct has been prohibited (Title Three, Tex. Family Code, Sec. 54.04, 1974).

Morales V. Turman, a civil action, concerned the juvenile justice system in Texas and in particular, the juveniles who had been or might be committed to the Texas Youth Council institutions. The Court's opinion dealt with the child's right to full due process in a juvenile court hearing and the right to counsel without waiver provisions. The Court's opinion also concerned the plaintiff's allegation of cruel and unusual punishment and the right to treatment had been violated. The Court upheld the plaintiff's allegations, and concluded that there had been widespread practices of physical and psychological brutality in violation of the Eighth Amendment's proscription of cruel and unusual punishment (U.S. Dist. Ct., Tex., No. 1948, 1974).

There is a growing criticism of the juvenile court for its jurisdiction over children who have not committed criminal offenses. In view of the serious stigma and harmful results of juvenile court contact in these cases, it has been recommended that such jurisdiction be eliminated (Task Force Report on Juvenile Delinquency, 1967). The Board of Directors of The National Council on Crime and Delinquency recently issued a policy statement advocating the removal of status offenses from the jurisdiction of the

juvenile court. Status offenses are defined as: truancy, running away, consensual sexual activity, drinking, smoking, disobeying authority, curfew violation, and incorrigibility. In other words "crimes" that only apply to children and not adults. The NCCD Board has also recommended that laws be repealed that subject adults to criminal prosecution for behavior that does no harm to other people, such as drunkenness, drug addiction, homosexuality and consensual sexual acts (**Crime and Delinquency**, April, 1975).[7]

Although these recommendations appear to be growing stronger and more frequent, most juvenile courts continue to be involved with these children. The schools, parents, and other social institutions impose demands upon the juvenile court to treat and find solutions to the problems. These community pressures upon the juvenile court have increased the problem of maintaining judicial integrity. While it is recognized that these behaviors are a matter for community concern and that there must be resources for them, it is felt that the juvenile court is not the proper place to look for solutions (Richard W. Kobetz & Betty B. Bosarge, 1973; Midonick, 1972). To recognize the need for change at the level of legislative and judicial policy is slow and difficult "... because social action in America has always been heavily laden with moral purpose [Vinter, 1967, p. 97]."

Children's Rights in Relation to the Community

The treatment of children in our society has been compared to colonialism in its combination of good intentions, selfish interests, and imbalance of powers. Compared with the civil rights granted to adults, the rights of children are constricted "ranging somewhere between bondage and parole." Society has many features that are so familiar to its members that they are taken for granted as the "natural order of things." This assumption should be set aside so that the familiar may be analyzed in effort to explain its existence (Kassebaum, 1974, p. 81). There seems to be a growing support for the concept that children should have the right to self-determination but the legal concepts of parental control and the legal requirements of parental consent leave little opportunity for self-determination (White House Conference on Children, 1970).

The concept of childhood did not always exist, it was invented. The beliefs about childhood constantly change in response to developments in civilization. As the concepts of the family and importance of education developed around the Eighteenth Century, parents became "morally" responsible for the upbringing of their children. Prior to this development children past the age of about seven entered adult life and became the natural companion of the adult. There was affection for children, but there was no awareness of a particular nature that distinguished childhood from adulthood (Philippe Aries, 1962).

Despite the apparent trend toward increased children's rights, it seems clear that the perception of children as property or chattel is still deeply rooted in society. Parental rights to control of children are still rated high on the scale of values (Serapio R. Zalba, 1971). The law no longer regards children as chattel, although prior to 1931 in the State of Texas a person was permitted to adopt a child simply by filing a written statement with the county clerk. Likewise, a parent was permitted to transfer parental authority and custody by writing (Vernon's Civil Statutes, Art. 1-8, 1911). The current adoption laws in Texas now require in general, a petition, termination of parental rights of the natural parents, attendance at a hearing, and a court decree granting the adoption. It is interesting to note that if the child to be adopted is twelve years of age or older, his consent must be given for the adoption. But, an exception is made whereby: "The court may waive this requirement if the best interest of the child would be served (Tex. Fam. Code, Sec. 16.05, 1973)."

The status of children as property owners or income producers remains almost the same as it was in medieval times. Children's economic interests and powers are subordinated to those of the parents. For example in Texas, "The earnings of an unemancipated minor are subject to the management, control, and disposition of the parent or parents having custody of the minor [Family Code, Sec. 5.23, 1973]." The law contributes to the inferior status of children and at the same time seems to be unfair (Henry H. Foster, Jr., 1974).

Musgrove (1970), has suggested that when social and economic institutions restrict the freedom of the young to marry, their social standing is "depressed". The minimum age for marriage in the United States without parental consent is generally twenty-one for males and eighteen for females (Council of State Governments, 1972). The law in Texas prohibits persons under the age of eighteen to marry without parental consent and/or a court order granting consent (Tex. Fam. Code, Sec. 1.52, 1973).

There are many additional examples of legal limitations on the civil liberties of children below a specified age. They may not hold public office; be admitted to many professions; make a will or contract; serve on a jury; acquire a domicile of choice; or consent to medical treatment (Foster, 1974; Mark J. Green, 1972). A child under eighteen is not allowed to seek medical or psychiatric treatment in Texas except under the following conditions. A child of sixteen or older, if residing separate from the parents and managing his own financial affairs, may give consent for treatment. An unmarried, pregnant female may consent to treatment relating to pregnancy but not abortion. A child may consent to treatment for communicable disease or drug use without parental consent (Tex. Fam. Code, Sec. 35.05, 1973).

Adolescents find themselves surrounded by rules which have been made by adults. It is considered legiti-

mate to do this because children are considered neither wise enough nor responsible enough to make proper rules for themselves. The result has been that children who violate the rules are labeled as deviant and thus become "outsiders" (David Gottlieb, 1973; Howard S. Becker, 1963). A long and socially separated childhood may be the cause of high crime rates in this country. Crime is often perceived by the youth as a shortcut to independence from adult control (Daniel Glaser, 1972).

It has been suggested that the development of an elaborate system of schools has prolonged the dependence of children and has changed the balance of power between the age groups. "Protective measures are a two-edged device: while they may signify concern for the welfare of the young, they also define them as a separate, non-adult population, inhabiting a less than adult world [Musgrove, 1970, p. 36]." The major problem related to the prolonged dependence of childhood may rest with the fact that school remains compulsory without alternative. Adults seek consciously or unconsciously to reinforce already existing barriers between the age groups. School represents the separation of age groups and reinforces the lack of control which children have over their lives. Children have thus turned from adults to their own age groups and have formed their own cultural systems with which they wish to identify (La Belle, 1974).

Two relatively new issues concerning children are the right to treatment and the right to privacy. These issues are complex and involve theory of crime, behavior and social control. The concepts have not been completely developed philosophically or constitutionally. The legal ramifications of the issues as they apply to children or adults are not clear. A complete discussion of this area is beyond the scope of this study. However, the issues are mentioned because of the applicability to children's rights.

The right to privacy for an adult was acknowledged by the Supreme Court in **Griswold v. State of Connecticut.** In that case a Planned Parenthood director had been convicted for giving information, instruction and medical advice to married persons for the purpose of preventing conception. His actions violated a Connecticut law. The Court held that the law forbidding the use of contraceptives was unconstitutional. The Court based the decision that there is a guaranteed right to privacy upon a combination of Amendments One, Three, Four, Five, Nine, and Fourteen. The Ninth Amendment provides: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people [U.S. Const. Amend. IX]." The Court reasoned that the Ninth Amendment was offered to quiet fears that a bill of rights could not be sufficiently broad to cover all essential rights and that the specific mention of some rights would be interpreted as a denial of others (85 S. Ct. 1678, 1965). The concept of a right to privacy could be used to test the constitutionality of laws and social controls that restrict the freedom of children. It could be applied, for example, to compulsory school attendance and involuntary treatment of juvenile status situations (Klapmuts, 1972).

The right to treatment has received more attention in the literature and in judicial decision. The court held in **Morales v. Turman** that the juveniles confined in the Texas Youth Council institutions were not receiving adequate medical and psychiatric care in violation of their constitutional and statutory rights. The court reasoned that if a juvenile is incarcerated for the express purpose of being "treated" for their behavior, their rights to receive such treatment "almost rises above controversy."

> Certainly the notion that the agents of the state should be permitted to exercise complete control over the lives of children by holding out the promise of treatment, and then brazenly to claim that they are under no obligation to provide such treatment, mocks the Constitution [U.S. Dist. Ct., No. 1948, p. 163, 1974].

Henry H. Foster (1974), has applied the right to treatment concept to compulsory school attendance laws. He suggested that unless schools provide meaningful education, it is not justifiable to compel attendance unless it is assumed that the police power of the state includes preventive detention in order to keep children off the streets. The principle applies in view of the fact that institutionalization is involuntary and is conditioned upon the purpose of meaningful education.

The implication of the right to treatment concept is that effective treatment must be given in return for society's right to exercise its **parens patriae** controls. Nicholas N. Kittre (1971), suggests that until the fact is admitted that people are removed from and controlled by society for reasons of "quarantine", the right to treatment will be compromised. The total abolition of social compulsion under the **parens patriae** doctrine is a utopian dream because as long as there are dangerous people, society will insist upon confinement. The compulsive aspects of social control present the possibility, and the reality, of a loss of privacy and lack of treatment without adequate state limitations (Kittre, 1971).

In summary, the rights of children appear to be undergoing a change which will make them conform with the requirements of the Constitution. At this time, only selective constitutional rights have been granted to children. Litigation continues throughout the nation and determination of which rights apply to children requires an almost case by case study. The major Supreme Court cases discussed in this chapter are summarized later in tabular form.

An attempt has been made to point out the urgent need to re-examine the legal status and rights of children. From the child's point of view, children are often the victims of adult authoritarianism. What the law provides in the

matter of protection, it takes away in increased dependence and loss of status. In the following chapter some alternatives to the current treatment of children in the court, school, and community will be explored.

TABLE 1

A Summary of United States Supreme Court Cases and Decisions Cited in Chapter IV

Name of Case	Year	Decision
Brown v. Board of Education	1954	Racially separated schools are unconstitutional
Tinker v. Des Moines	1969	Freedom of speech is a constitutional right of students
Dixon v. Alabama	1961	Due process required in student suspension cases
Goss v. Lopez	1975	Due process required in student suspension cases
Kent v. United States	1966	Right to counsel and hearing required before waiver of juvenile jurisdiction
In re Gault	1967	Due process required in juvenile court proceedings
In The Matter of Samuel Winship	1970	Juveniles constitutionally entitled to proof beyond reasonable doubt
Duncan v. Louisiana	1968	Adult has constitutional right to jury trial
McKeiver v. Pennslyvania	1971	Jury trial not constitutionally required in juvenile court proceedings
Griswold v. Connecticut	1965	Adults have constitutional right to privacy

ALTERNATIVES TO COMPULSORY SCHOOLING AND JUVENILE JUSTICE SYSTEM INTERVENTION WITH TRUANTS

> We need to start talking not about sparing children for a few years from the horrors of adult life, but about eliminating those horrors. In a society free of exploitation, children could be like adults (with no exploitation implied); and adults could be like children (with no exploitation implied). The privileged slavery (patronage) that women and children undergo is not freedom. For self-regulation is the basis of freedom, and dependence the origin of inequality [Firestone, 1970, p. 96].

The White House Conference on Children (1970) envisioned that in the year 2000 compulsory school attendance will be a thing of the past. Schools as we now know them will be replaced by a "diffused learning environment" which will involve resources that are not now recognized as sources of learning. More use will be made of homes, businesses, parks, and museums. There will be places designed for people to gather for purposes of learning things together. The schools of the Twenty-first Century will concentrate more on contributing to a person's ability to know himself and to relate to others. Tomorrow's education is described as a "learning Utopia." Without massive, thoughtful change in society, the Conference predicted we will not get there at all.

The obvious alternative to compulsory attendance laws is to completely abolish them. There is growing support for this action as discussed in previous chapters. The greatest problem relating to compulsory school laws may be the strong social and cultural support for them (Howard M. Johnson, 1973). According to a Gallup Poll of public attitudes toward education, over ninety per cent of the public favors compulsory attendance at least for the elementary and junior high school grades. Seventy-three per cent of the public and fifty-six per cent of professional educators favor compulsory attendance for senior high school age group (Gallup, **Phi Delta Kappan,** 1972).

The fact that there are strict age limitations on obtaining jobs has served to reinforce societal expectations that school is the only alternative for young people. But, the financial and social costs of enforcing compulsory attendance is not worth the effort according to Johnson (1973). Any expectation that the social and economic problems created by children being out of school can be solved by enforcing more and longer attendance should be abandoned. Recognizing that school learning cannot be fostered in a compulsory format as we now have is the first step in alleviating the problem (Johnson, 1973).

> The advance-guard problem is that the compulsory school system, like the whole of our economy, politics, and standard of living, has become a lockstep. It is no longer designed for the maximum growth and future practical utility of the children into a changing world, but is inept social engineering for extrinsic goals, pitifully short-range [Goodman, 1962, p. 45].

A high school diploma does not guarantee that the holder is educated or that social mobility will be available. An "unwilling" student can earn a diploma simply by doing what he is told and keeping out of trouble for four years. James G. Piatt (1974), suggests that we must admit to the fact that attendance is nothing more than attendance. And, that learning is not related to attendance but rather is related to a deep desire for self-realization and growth.

With or without compulsory school attendance laws it has been suggested that schools will have limited positive influence on children as long as the public expects a rigid, "bus and bell" educational format. Once the custodial function of the school is removed, schools should be able to provide a wider variety of educational programs. Even in the existing schools, one alternative would be to create individual curriculum which would permit students to select courses and programs suitable to their interests and commitment level (Johnson, 1973).

There are alternative forms of education in California under the existing system for students unable or unwilling to conform to the traditional school. The alternative is a fifteen hour per week continuation school. Since 1965 the continuation schools have grown to around 500 separate schools and serve tens of thousands of students. Many students choose the continuation schools over traditional schools because of the shorter hours and greater freedom of choice. They have the option of attending school part time and working the remainder of time. They can quit school to go to work, or for any reason, and still come back later to finish their education (Piatt, 1974). In this type alternative program students are usually permitted a voice in their program development. They are given curriculum choices, freedom, and objectives. To some extent, it is expected that the student will independently gather and retain information (Rita Dunn & Kenneth Dunn, 1974).

There are many different instructional programs in addition to alternative schools. There are open classrooms, open campus, community schools, work-study programs and individualization. Before a student is assigned to a specific program, his learning style should be matched with the program characteristics and learning environment (Dunn & Dunn, 1974). No one stereotyped school system or instructional program will work for everyone. Even a free learning, humanistic environment will fail with some students. Some individuals demand

academic pressure and discipline. These students may function best in the traditional school (Piatt, 1974)[8]

Another approach to attendance problems short of abolishing compulsion is to decrease the number of years of required attendance. Functional literacy certification, contracting of the acquisition of basic learning skills, or a focus on adult education rather than at the lower ages could be provided (M. Nawaz & S.A. Tanveer, 1975). Another alternative might be that we simply learn to accept the fact that some youth will be idle for at least a part of their adolescent years. If unemployment and idleness are so objectionable, then we should alter our economic and income distribution structure rather than burden the schools with impossible custodial problems (Johnson, 1973). The White House Conference on Children (1970) recommended that national priorities be changed to give first priority to the spending of money for education and to end racism, poverty, and pollution. There is a need for earlier career and job training opportunity. Financing of schools should be channeled into supporting businesses which agree to provide supervisory training for students. Finances must be made available to both community and industry to work with schools (Johnson, 1973).

Mississippi is the only state in the United States without some form of compulsory school attendance law. The state repealed the law in 1956 in order to avoid integrated schools (Stephen Arons, 1973). Arons noted that Mississippi provides a microcosm in which discrimination and poverty in America can be examined with and without compulsory school attendance laws. In spite of the theories of the "de-school society" reformers, the discussions in academic groups, and the rising debate in the state about reenacting compulsory school attendance laws, Arons suggests that disadvantaged children will become disadvantaged adults with or without the laws that force them to attend school.[9] The lack of concern for children, especially poor children, goes beyond the absence of attendance laws. Society has little place for them and there are no jobs or significant roles for children. Arons asserts that the ideological belief that schools should be able to improve the lives of children is not true. One of the motives in seeking to reenact attendance laws in Mississippi is an economic one. The rationale is that children should be schooled for economic mobility, to move up and out of poverty. Arons stated the children know they are not going to get a job by going to school, and that it is an impossible dream that everyone can move up the ladder through school (Arons, 1973).

One interpretation of compulsory attendance laws is that it is an avoidance of the basic issues of the quality of life for children. Instituting or removing compulsory schooling may not be any more effective than any other "patchwork" reforms because it is not comprehensive. The problems of repressive schooling cannot be solved apart from the problems of economic inequality, bureaucracy, and discrimination in society. "Forty-nine states demonstrate daily that compulsory education does not by itself eliminate social injustices or provide a way out of poverty [Arons, 1973, p. 56]."

We must begin to treat our students in a more humane way, allow them to learn if they desire to learn, allow them the opportunity to experience alternatives outside the traditional setting; allow them to make mistakes in judgment and to feel the consequence of their mistakes (Piatt, 1974). Summerhill, a private residential school in England, is an example of an environment in which equality, freedom and self-determination is emphasized. At Summerhill each individual is free to do what he likes as long as he is not trespassing on the freedom of others. A.S. Neill suggests this is a realizable aim in any community if the individuality and personality of the child is respected, just as it would be with an adult (Neill, 1960). The success of Summerhill, as research has indicated in treatment programs, may depend upon the particular strengths and personality of the leader (William E. Amos, 1974).

According to B. Frank Brown (1973), it is unfortunate that some groups cling to the idea of compelling school attendance. He noted that it should be kept in mind that some institutions have a vested interest. There is a growing surplus of teachers and a declining birth rate. It is natural for groups in this kind of bind to support forced schooling.

The problem with American schools is not the lack of purpose but the continued dedication to purposes that reflect inequality in society and less appealing cultural values (Michael B. Katz, 1973). Until this is recognized it has been suggested that:

> The existence of compulsory school attendance regulations and the accompanying societal view that school is the only proper place for young people may help assure school attendance for **some** students, but it is doubtful that either one of these factors can do very much to assure that the school's basic goal of education is accomplished by **any** [Johnson, 1973, p. 232].

Alternatives to Juvenile Justice System Jurisdiction Over Truancy

The call for the complete elimination of juvenile court jurisdiction over truancy, runaway and other juvenile status offenses is reflected repeatedly in the literature. It is being supported by national organizations such as: The White House Conference on Children; The International Association of Chiefs of Police, The Department of Health, Education, and Welfare, **Model Acts for Family Courts** (1975); and The National Council for Crime and Delinquency. Significant litigation by private attorneys and organizations, such as the American Civil Liberties Union and The Legal Aid Society, has brought the ques-

tion of constitutionality of these cases to the attention of the courts.

Even as pressure mounts, juvenile courts continue to be involved with these children by the thousands throughout the United States. Rubin (1972), suggested the reason court decisions have assumed the importance they have is because the various administrations do not change themselves. He notes that the legislative change is equally as negative.

> Even courts that have held prison systems unconstitutional do not discharge the inmates. The legislatures could, but they do not; the courts could, but they do not. Administration can [Rubin, 1972, p. 134].

An example of what administration can do is the closing of Massachusetts juvenile training schools in 1972. Joseph M. Leavey, Commissioner, Massachusetts Department of Youth Services, stated many agencies have the power to affect change but it is a question of who is going to exercise the power. The closing of the institutions followed a period of scandal and public outcry about the conditions and care of delinquent youth. In closing the training schools the Youth Services administration had the support of the governor, other high political officials, and the media. The most difficulty came from staff, some judges and law enforcement people. Mr. Leavey emphasized that the greatest resistance and difficulty came from the staff (Leavey, 1973). The vested interest principle seems to apply. "Like all bureaucracies, criminal justice agencies can hardly be expected to implement policies that would diminish their important [Michael E. Mikakovich & Kurt Weis, 1975)]." The national philosophy of corrections seems to be that if more money was available for programs and if the staff was better trained, we would be able to rehabilitate more people. However, research has shown that we do not known how to "rehabilitate" (Amos, 1974).

The alternative to juvenile court involvement with children who are truant from school is to discontinue jurisdiction. Jeffery Glen (1970), posed the question: what have we accomplished through coercion with children that could not have been accomplished through family counseling, special education programs, increased income, better housing, and so on. Or, as Schur (1973) suggested, through non-intervention and leaving some children alone wherever possible. When the juvenile justice system intervenes to compel school attendance and fails, as has been noted in earlier chapters, what justification can be made for intervention in the first place (Glen, 1970)? Poor school attendance is clearly a school related problem and should not be dealt with by the court, but rather by the school and community (Holt, 1972).

It has been suggested that perhaps the reason juvenile courts retain jurisdiction over truants is because no one else wants them. The parents, schools, and social agencies refer them to the juvenile court simply because the court does have legal jurisdiction. The courts are reluctant to refuse cases which are legally mandated to them (Kobetz & Bosarge, 1973). The argument for retaining jurisdiction because no one else will do anything has been questioned by Judge David L. Bazelon (1970). He suggested that just the opposite is true. Because the court **does** act, and offers the promise of solutions, no one else assumes responsibility.

> If the juvenile court had no jurisdiction to commit children in such situations the community would have to come up with a solution. Neither the parents nor the community need to look for solutions while the juvenile court is available [Bazelon, 1970, p.43].

The retention of court jurisdiction, even for the purpose of referral to other agencies, is counter-productive. It injects a coercive, involuntary element into the relationship which undermines the prospect of success. The very existence of the court inhibits the effectiveness and growth of voluntary agencies because the court invariably will be used, despite protestations that it is only a last resort (Bazelon, 1970).

Once the legislatures have redefined the court's jurisdiction to eliminate juvenile status offenses, it will become necessary for community agencies, schools, and businesses to establish programs and opportunities for youth (Kobetz & Bosarge, 1973). The institutions of society need to be evaluated in terms of how we can improve the options of children in their preparation for adult life (Report of the Panel on Youth, 1974).

Any efforts at delinquency prevention should be made with a collective or community focus rather than singling out the individual. Voluntary programs should be preferred over institutionalization and compulsory ones. Programs that employ community people and youth should be preferred to those that employ only professionals. These approaches do not, however, deal with the basic issue which is overall perspective that determines our thinking about children (Schur, 1973).

> Ultimately crime and delinquency are, in some degree, indicators of basic conflicts in a society and are in this respect likely to remain resistant to even highly effective specific controls [Kassebaum, 1974, p. 164].

The possibility is that real solutions lie in the expansion of civil rights of children, the upgrading of their political status and power, as well as a change in the traditional values of our society and educational system.

Alternatives Within the Community

Children below the age of eighteen to twenty-one are simultaneously the most indulged and oppressed segment of society. Until reaching ages prescribed by law, children are compelled to attend school, they are excluded from employment, denied the right to drive, to buy alcoholic beverages, cigarettes, or attend certain movies. Those children under eighteen are not allowed to vote, do not participate in decisions on labor, welfare, or school policies in which they have a vital interest. In society children are officially powerless. From the adult point of view these limitations stem from concern and protection rather than tyranny (Report of the Panel on Youth, 1974). These laws and customs created to protect are increasingly viewed as constraining and oppressive (Klapmuts, 1972).

The narrow legal approach of extending adult rights to children without consideration of broader needs is not the answer according to Marian Wright Edelman (1974). The Honorable Justice Wise Polier (1974), also cautioned that the drive to divert children from the juvenile system should not be used to avoid many of the unresolved problems in the juvenile courts. The widely shared view of children's basic needs are generally the need for loving care, for normal physical, emotional and intellectual growth, health care, and a healthy environment free of poverty (White House Conference on Children, 1970).

It has been suggested that whatever children need we all need. When we speak of children's needs as belonging only to children, we make them seem trivial and invalidate them.

> For no amount of sentimentalizing or preaching will make a society provide for its young people a better quality of life than it provides for its adults. We fool ourselves if we think ways can be found to give children what all the rest of us so sorely lack [Holt, 1974, p. 105].

The objective then for society, is to reduce the amount of victimization of children and adults, and to raise the general level of well being throughout the entire society (Farson, 1975; Gil, 1970).

The White House Conference on Children (1970), held that the rights of parents cannot infringe upon the rights of children and that parents in the future will have more responsibility than authority. Some of the rights for children recently proposed include the basic right of self-determination, upon which all other rights depend. It has been suggested that children should have the right to decide the matters which affect them most directly. Children should have the right to economic power, the right to work, acquire and manage money (Farson, 1975).

There is general agreement that current child labor laws need to be revised to develop wider opportunities for employment. The Panel on Youth of the President's Science Advisory Committee (1974) has recommended a wide range of change concerning school and work for young people. These recommendations, while far from radical, would come closer to assuring the rights of children to self-determination while protecting them from exploitation.

The problem of being powerless and lacking equality in decision making processes is not a specific youth problem (Talcott Parsons, 1973). The same arguments for and against racial and women's equality recur when issues arise regarding the moral and legal rights of children. In a larger sense, there is a conflict between the principles of subordination and equality which are characteristic of a patriarchal culture (Henry Foster, 1974).

To stipulate a list of rights for children does not free them from obligation or restraints, but is intended to enhance their sense of responsibility. "The authoritarian adult...treats minors as inferiors, withholds respect, and regards them as objects of sufferance [Henry Foster, 1974, p. 10]." The alternative is to search for institutional change that will ensure that children develop capabilities for fulfilling the demands and opportunities that will confront them as adults, and to ensure that they gain the self-esteem and fulfillment that all persons need (Report of the Panel on Youth, 1974).

SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

The purpose of this study was to examine the impact of compulsory school attendance laws on the administration of juvenile justice. The study involved an exploration of historical developments of both institutions and an examination of current problems. Specific questions were: (1) Why do we have compulsory school attendance laws in the United States? What are the advantages and disadvantages? (2) Are children's rights violated by mandatory schooling and juvenile court involvement with truancy? (3) What are some possible alternatives to compulsory school attendance laws and to drawing the truant into the correctional system?

A brief summary of the findings follows. From 1852 to the late 1930's compulsory school attendance laws, juvenile courts, and child labor laws were enacted to attempt to safeguard children from ignorance, delinquency, and excessive labor. Compulsory school attendance laws and child labor restrictions met opposition from economic and religious groups who adhered to the belief in parental authority and family control of the child's life and earnings. However, during the days of the depression when child labor was no longer economically profitable to the general population, restrictive legislation was enacted. All three provisions now appear firmly rooted in society. It appears that changes in the status of children have occurred in response to the changing needs of adult society and that the change takes place when it meets the convenience of adults.

The provisions for compulsory schooling and juvenile courts were created as seemingly protective and clearly coercive measures of intervention to serve "the best interests of the child and state." The predominant attitude of the early juvenile court, and in some respects at the present time, was that the court should not be concerned with whether or not the child had committed an offense but rather what could be done to help him. When early courts considered the constitutionality of these measures, they did so on the basis of the parental or state rights rather than the child.

Undoubtedly, there were substantial improvements in the quality of life for adults and children as a result of Nineteenth Century reforms such as: improved conditions in institutions for children, establishment of mother's pensions, and improved working conditions. One view, however is that they did not represent humanitarian social change as much as they represented a way of maintaining the system and encouraging the growth of a bureaucratic, industrialized society.

The general impression has been created in the literature that compulsory schooling, child labor laws, and the juvenile court reinforce the inferior status and dependency of children. The findings emphasize that responsibility is not promoted by making people dependent and irresponsible. There appears to be substantial evidence that the schools and courts have not had the reclaiming, preventing and enlightening effects the founders anticipated. Recommendations have been made that juvenile court jurisdiction over non-criminal offenses be terminated and that compulsory school attendance laws be abolished.

A significant and problematic issue that has not been discussed in detail in this study is the frequent and enormous pressure that parents place upon the schools and courts to resolve their problems of child care. Perhaps this suggests the need to re-evaluate our traditional concepts of childhood and family life.

Although there is still a great deal of confusion in the area of children's rights, the implication is that schools and courts are undergoing a change in response to the Constitution. Children's rights have been expanded in recent years, most significantly perhaps by the Twenty-sixth Amendment to the Constitution, granting persons eighteen years of age the right to vote.

There seems to be support for the following conclusions: children should not be "protected" by a double standard application of Constitutional requirements; children, as well as adults, should have the right to determine the matters that affect them most directly; the coercive mechanisms of compulsory school attendance laws and juvenile justice system processing of truancy would seem to violate fundamental rights; an alternative appears to be creation of non-coercive learning experience without juvenile court jurisdiction over truant children.

It is not known whether the apparent trend toward non-intervention and expansion of rights, will decrease the problems of children. It is an accepted fact that the problems are intensified by poverty, discrimination, and inequality. Most of these problems are beyond the control of the juvenile court.

The possibility is that the lack of compulsory school attendance laws and a limited juvenile court might not make any difference at all. The primary difference might be an eventual change in the current paternalistic, patronizing philosophy toward children and a movement toward granting children more control of their lives, which in itself might be a significant condition. The findings point to the need for assessing the social, emotional and economic consequences of the implementation of children's emancipation and increased rights.

FOOTNOTES

[1]The term "free exercise clause" refers to the First Amendment of the U.S. Constitution: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances [U.S. Constitution, Amendment I]."

[2]The absence of compulsory school attendance law in Mississippi is discussed in Chapter V.

[3]For detailed account of the historical attempts to regulate child labor see: Robert H. Bremner, **Children and Youth in America**, Vol. II, Parts 1-6.

[4] Labeling theory and other theoretical foundations are discussed by Clarence Schrag in Part II "Perspectives" in **Crime and Justice: American Style** (U.S. Department of Health, Education, and Welfare, 1971).

[5]The courts did not consider earlier cases on the basis of the child's constitutional rights but rather on parental rights; see, e.g., Chapter II.

[6]There is a legal debate over whether education is a right, power, or interest. For detailed analysis see John C. Hogan (1974).

[7]In discussion of the ineffective laws concerning adult behavior Edwin M. Schur observed: "Unforceable criminal law serves as an indicator of inconsistencies in a society's value system; it may reveal conflicts of interest (both economic and more general) underlying the legal structure and may serve to pinpoint significant loci of social change [1965, p. 7]."

[8]Additional alternatives within the compulsory format are discussed in **Schools and Delinquency** (Polk and Schafer, 1972, p. 240).

[9]Christopher Jencks also concluded that school cannot significantly effect the chances of success in society; see, **Inequality: A Reassessment of the Effects of Family and Schooling in America** (New York: Basic Books, 1972).

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